

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BOB ROSS PETERSON,

Plaintiff,

V.

CAROLYN W. COLVIN, Acting  
Commissioner of the Social Security  
Administration,

Defendant.

CASE NO. 2:16-cv-01531

REPORT AND RECOMMENDATION  
TO DENY APPLICATION TO  
PROCEED *IN FORMA PAUPERIS*

NOTED FOR: November 18, 2016

This matter has been referred to United States Magistrate Judge J. Richard Creature pursuant to 28 U.S.C. § 636(b)(1) and Local Magistrate Judge Rule MJR 4(a)(4), and as authorized by *Mathews, Secretary of H.E.W. v. Weber*, 423 U.S. 261, 271-72 (1976). This matter has come before the Court on plaintiff's filing of an application to proceed *in forma pauperis*, and a complaint to review and set aside a decision of the Social Security Administration pursuant to 42 U.S.C. § 405(g) (ECF No. 1). Because plaintiff's application indicates the presence of sufficient income to pay the \$400.00 filing fee, the undersigned recommends that the Court deny the application.

## **DISCUSSION**

2 The District Court may permit indigent litigants to proceed *in forma pauperis* following  
3 completion of a proper affidavit of indigence. *See* 28 U.S.C. § 1915(a). According to the Ninth  
4 Circuit, the decision to grant or refuse an application to proceed *in forma pauperis* “is within the  
5 discretion of the District Court.” *Weller v. Dickson*, 314 F.2d 598, 600 (9th Cir. 1963), *cert.*  
6 *denied*, 375 U.S. 845 (1963). An application to proceed *in forma pauperis*, when granted, is  
7 “granted as a privilege and not as a matter of right.” *Id.*

8 By requesting the Court to be allowed to proceed *in forma pauperis*, plaintiff is asking  
9 the government to incur the filing fee because of an alleged inability to afford the costs necessary  
10 to proceed with the cause of action. In the application, plaintiff indicates that in the last 12  
11 months he has received \$45,340.36 in disability, unemployment, workers compensation or public  
12 assistance (see Declaration and Application to Proceed *in Forma Pauperis*, Dkt. 5, p. 1). Plaintiff  
13 also indicates that he has \$125,000.00 in a savings account that he received from a settlement  
14 and wants to use to buy a house (*id.*, p. 2). Despite the fact that plaintiff wants to use his savings  
15 to purchase a house, the funds in savings must be considered and therefore, the Court concludes  
16 that it is reasonable for plaintiff to be required to pay the filing fee before proceeding with this  
17 cause of action.

## CONCLUSION

19 Because it is reasonable for plaintiff to incur the costs to proceed with this cause of  
20 action, the undersigned recommends that the Court deny the application to proceed *in forma*  
21 *pauperis*. Accordingly, the undersigned also recommends that the Court order plaintiff to pay  
22 the required filing fee within thirty (30) days of the Court's order or risk dismissal of his cause of  
23 action.

1 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
2 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.  
3 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo*  
4 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit  
5 imposed by Rule 72(b), the clerk is directed to set the matter for consideration on November 18,  
6 2016, as noted in the caption.

7 Dated this 25th day of October, 2016.

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10 J. Richard Creatura  
11 United States Magistrate Judge  
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